

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CASE NO.: 4:21-cv-3706

PREPARED FOOD PHOTOS, INC. FKA
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

ANDEAN GROUP LLC DBA
FRESH2YOURDOOR,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff PREPARED FOOD PHOTOS, INC. FKA ADLIFE MARKETING & COMMUNICATIONS CO., INC. by and through its undersigned counsel, brings this Complaint against Defendant ANDEAN GROUP LLC DBA FRESH2YOURDOOR for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff PREPARED FOOD PHOTOS, INC. FKA ADLIFE MARKETING & COMMUNICATIONS CO., INC. (“PFPI”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute PFPI’s original copyrighted Work of authorship.

2. Adlife is a retail food advertising company servicing retailers and wholesalers throughout the United States for almost 40 years. Adlife specializes in custom photography, full

service design and production, web and print management, mobile technology, and proprietary digital advertising platforms.

3. Defendant ANDEAN GROUP LLC DBA FRESH2YOURDOOR (“Andean”) is a retail food delivery service. At all times relevant herein, Andean owned and operated the internet website located at the URL <https://www.fresh2yourdoor.com/> (the “Website”).

4. PFPI alleges that Andean copied PFPI’s copyrighted Work from the internet in order to advertise, market and promote its business activities. Andean committed the violations alleged in connection with Andean’s business for purposes of advertising and promoting sales to the public in the course and scope of the Andean’s business.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Texas.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

9. Andean Group LLC dba Fresh2yourdoor is a Texas Limited Liability Company, with its principal place of business at 10101 Fondren Road, Suite #400, Houston, TX 77096, and can be served by serving its Registered Agent, Samuel Behar, 10101 Fondren Road, Suite #400, Houston, TX 77096.

THE COPYRIGHTED WORK AT ISSUE

10. In 1998, PFPI created the photograph entitled “SeaBassChilean002”, which is shown below and referred to herein as the “Work”.



11. PFPI registered the Work with the Register of Copyrights on October 23, 2016 and was assigned the registration number VA 2-022-051. The Certificate of Registration is attached hereto as Exhibit 1.

12. PFPI’s Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

13. At all relevant times PFPI was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

14. Andean has never been licensed to use the Work at issue in this action for any purpose.

15. On a date after the Work at issue in this action was created, but prior to the filing of this action, Andean copied the Work.

16. On or about July 1, 2019, PFPI discovered the unauthorized use of its Work on the Website in order to advertise, market and promote sales of Chilean sea bass.

17. Andean copied PFPI's copyrighted Work without PFPI's permission.

18. After Andean copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its retail food delivery service.

19. Andean copied and distributed PFPI's copyrighted Work in connection with Andean's business for purposes of advertising and promoting Andean's business, and in the course and scope of advertising and selling products and services.

20. PFPI's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

21. Andean committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.

22. PFPI never gave Andean permission or authority to copy, distribute or display the Work at issue in this case.

23. PFPI notified Andean of the allegations set forth herein on February 5, 2020 and February 25, 2020. To date, the parties have failed to resolve this matter. Copies of the Notices to Andean are attached hereto as Exhibit 3.

**COUNT I
COPYRIGHT INFRINGEMENT**

24. PFPI incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. PFPI owns a valid copyright in the Work at issue in this case.

26. PFPI registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

27. Andean copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without PFPI's authorization in violation of 17 U.S.C. § 501.

28. Andean performed the acts alleged in the course and scope of its business activities.

29. Andean's acts were willful.

30. PFPI has been damaged.

31. The harm caused to PFPI has been irreparable.

WHEREFORE, the Plaintiff Prepared Food Photos, Inc. fka Adlife Marketing & Communications Co., Inc. prays for judgment against the Defendant Andean Group LLC dba Fresh2yourdoor that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiff its actual damages and Andean's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

- c. Plaintiff be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon;
- d. Plaintiff be awarded pre- and post-judgment interest; and
- e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: November 11, 2021

Respectfully submitted,

/s/ Joel B. Rothman
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